

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,**

Plaintiff,

-vs-

Case No. 11-C-406

**BRIAN THOMAS KIERNAN and the KIERNAN
HEATING & AIR CONDITIONING, INC.
SIMPLE PLAN,**

Defendants.

ORDER FOR DEFAULT JUDGMENT

Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor ("the Secretary") having filed her complaint; Defendants Brian Thomas Kiernan and the Kiernan Heating & Air Conditioning, Inc. Simple Plan ("the Plan") having been served with the complaint and summons; Defendants Brian Thomas Kiernan and the Plan having failed to plead or otherwise defend within the time prescribed by law; default of Defendants Brian Thomas Kiernan and the Plan having been entered by the Clerk of Court on November 1, 2011; and the truth of the allegations contained in the Secretary's complaint having been verified by the attached declaration of the Employee Benefits Security Administration Investigator; now, therefore upon application of the Secretary and for cause shown,

DEFAULT JUDGMENT IS HEREBY ENTERED against Defendants Brian Thomas Kiernan and the Plan in accordance with the prayer of the complaint in the above-styled action; and it is:

ORDERED, ADJUDGED, AND DECREED that:

1. Defendant Brian Thomas Kiernan is permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §1001 *et seq.*
2. Defendant Brian Thomas Kiernan is liable to the Plan in the total amount of \$21,116.66 which represents the unremitted employee contributions and lost opportunity costs which accrued as a result of the fiduciary breaches he committed.
3. Within ten (10) days of service of this judgment upon Defendant Brian Thomas Kiernan, he shall make a payment of \$21,116.66 to the Plan c/o Oppenheimer Funds and shall provide proof of such payment to the Regional Director, Chicago Regional Office, Employee Benefits Security Administration, 230 S. Dearborn St., Suite 2160, Chicago, IL 60604.
4. Within fifteen (15) days of service of this judgment upon Defendant Brian Thomas Kiernan, the Plan's asset custodian shall allocate the payment or any partial payment of \$21,116.66 made pursuant to paragraph 3 above, to the investment accounts of the Plan's participants and beneficiaries who: (1) were employees of Kiernan Heating & Air Conditioning, Inc., (2) were Plan participants during the period from March 1, 2008 through March 31, 2009, and (3) had employee contributions withheld from their pay for remittance to the Plan during this period and such contributions were never remitted to the Plan. The pro rata share to be allocated to each of the individual investment accounts of the Plan's participants shall be in accordance with Schedule A, attached hereto and incorporated herein.
5. Within ten (10) days after allocation of funds to the investment accounts of the Plan's participants and beneficiaries, Defendant Brian Thomas Kiernan shall provide proof of such allocation to the Regional Director, Chicago Regional Office, Employee Benefits Security

Administration, 230 S. Dearborn St., Suite 2160, Chicago, IL 60604.

6. Except for purposes of complying with the requirements of this Default Judgment, Defendant Brian Thomas Kiernan shall be permanently enjoined from serving or acting as a fiduciary or service provider with respect to any employee benefit plan subject to ERISA.

7. The Secretary is hereby awarded her attorney fees and the costs of this action.

8. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Default Judgment.

9. Nothing in this Default Judgment is binding on any government agency other than the United States Department of Labor.

Dated at Milwaukee, Wisconsin, this 31st day of January, 2012.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Rudolph T. Randa', written over a horizontal line.

HON. RUDOLPH T. RANDA
U.S. District Judge